

**OPINION
58-48**

July 2, 1958 (OPINION)

COUNTIES

RE: County Commissioners - Majority Necessary for Transaction of
County Business

This is in reply to your request for an opinion of this office in regard to two members of your Board of County Commissioners holding meetings and transacting business as the Board of County Commissioners.

Your specific questions are stated as follows:

1. May a Board of county Commissioners delegate authority to take official action on general County matters to members of such board, not constituting a quorum, such authorization to be valid only while other members of the Board are unable, for any reason, to attend meetings of the Board?
2. With respect to the comment made by the office of the State Examiner, would it be effective to eliminate any question of legality of actions taken by less than the majority of the Board of County Commissioners at the meetings specified, if the Board, at a regular meeting, were to ratify and specifically approve all actions taken by the minority members in the absence of a quorum?"

You call our attention specifically to the terms of a resolution authorizing the two members to allow all authorized bills against the county and conduct necessary business to meet their obligations of the county, a resolution requesting the State Highway Department to award a highway contract for a highway project, the county agreeing to reimburse the Highway Department for any payment made under the contract, not collectible from the Bureau of Public Roads, and minutes of a meeting held by the two members authorizing the Chairman and County Auditor to execute a construction and maintenance agreement between the State Highway Department acting for the Federal Bureau of Roads and Pembina County for a public highway.

We believe it obvious under the provisions of chapter 11-11 of the North Dakota Revised Code of 1943 that a quorum for the transaction of county business requires a majority of the members of the board. The "meetings" held do not therefore constitute valid meetings of the Board of County Commissioners. We find the general statement in 20 C.J.S. 862, Counties, Section 89, that:

A county board may not delegate its powers involving the exercise of judgment and discretion, but may delegate its ministerial and executive duties."

We also find at 20 C.J.S. 863, Counties, Section 90, the statement that:

A county board may ratify or confirm unauthorized acts of its individual members which it could have authorized in the first instance. . . ."

Generally speaking, it is our thought that authorizing entering into the contracts to which you have reference would be the exercise of judgment and discretion, although a different result could be reached depending upon the extent of negotiation, etc., by the full board prior to the actual formality of passing a resolution authorizing the actual signing of the contracts. It is further our thought that ratification and approval by the full board at a regular meeting of the board of County Commissioners would not necessarily eliminate any question of legality of actions taken by less than the majority of the board but that such action would at least resolve any questions as to whether the actions taken by the two members of the board were within the scope of the authority attempted to be delegated to them.

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Attorney General